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& BERRY**  
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April 13, 1999

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Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37219

**VIA HAND DELIVERY**

Re: *Complaint of AVR of Tennessee, L.P. D/b/a Hyperion of Tennessee, L.P.  
Against BellSouth Telecommunications, Inc. To Enforce Reciprocal  
Compensation and "Most Favored Nation" Provision of the Parties'  
Interconnection Agreement*


Docket No. 98-00530

Dear David:

Please substitute the attached pages 8 and 14 in the pre-filed testimony filed by Hyperion on April 8, 1999, in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/nl  
Enclosures

**Q. DID HYPERION EXERCISE ITS RIGHT TO ADOPT THE PROVISIONS OF ANOTHER AGREEMENT UNDER EITHER SECTION IV.C OR SECTION XIX?**

**A.** Yes. By letter dated March 13, 1998, Hyperion notified BellSouth that it accepted the deemed offer of the reciprocal compensation provisions of the KMC Agreement and requested that BellSouth provide for signature an amended agreement containing the relevant KMC provisions. Our request specifically stated that Hyperion was exercising its rights under either Section IV.C or XIX of the Agreement. The relevant provisions of the KMC Agreement state:

Reciprocal compensation applies for transport and termination of Local Traffic (including EAS and EAS-like traffic) billable by [BellSouth] or KMC which a Telephone Exchange Service Customer originates on [BellSouth]'s or KMC's network for termination on the other Party's network.

The Parties shall compensate each other for transport and termination of Local Traffic (local call termination) at a single identical, reciprocal and equal rate as set forth in Exhibit 8.

The rate set forth in Exhibit 8 of the KMC Agreement is \$0.009 per minute of use.

**Q. DID THE CONDITIONS SPECIFIED IN EITHER SECTION IV.C OR SECTION XIX EXIST AT THE TIME HYPERION SOUGHT TO AMEND THE AGREEMENT?**

**A.** Yes.

**Q. PLEASE EXPLAIN.**

**A.** The difference between local minutes of use terminated by Hyperion from BellSouth and those local minutes terminated by BellSouth from Hyperion exceeded three million minutes in April and May 1998. By BellSouth's own measurement, Hyperion terminated 3,036,999 and 3,716,725 more minutes of use from BellSouth than BellSouth terminated

traffic, particularly for purposes of billing for reciprocal compensation; and whether BellSouth has separately included calls to ISPs in local telephone charges.

**Q. ARE EITHER OF THESE FACTORS PRESENT IN THIS CASE?**

**A.** No. The parties never discussed, and the Agreement does not require, the separate metering of calls to ISPs for any purpose, let alone for reciprocal compensation purposes. Nor, to the best of my knowledge, does BellSouth separately meter or bill its own customers for calls to ISPs.

**Q. IF THE AUTHORITY DETERMINES THAT CALLS TO ISPs SHOULD BE TREATED AS LOCAL UNDER THE AGREEMENT AND THAT HYPERION IS ENTITLED TO INCORPORATE THE RECIPROCAL COMPENSATION PROVISIONS OF THE KMC AGREEMENT, HOW SHOULD HYPERION BE COMPENSATED?**

**A.** Hyperion should be compensated for all local traffic, including traffic to ISPs, at the \$0.009 per-minute-of-use rate set forth in the KMC Agreement.

**Q. WHAT ACTION SHOULD THE COMMISSION TAKE?**

**A.** The Commission should enter an order: (1) declaring that the traffic exchange provisions of the Hyperion Agreement are fully applicable to local exchange calls that terminate to ISP customers, (2) directing BellSouth to amend the Hyperion Agreement as requested, and (3) directing BellSouth to pay Hyperion for reciprocal compensation on a per-minute-of-use basis, together with interest thereon, as provided under Sections IV.C and XIX.F of the Hyperion Agreement.

**Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

**A.** Yes.

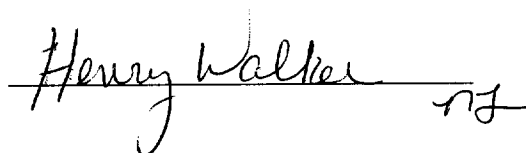
**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 1999, a copy of the foregoing document has been served on the parties of record listed below via U.S. First Class Mail.

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
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Guy M. Hicks  
333 Commerce Street  
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Bennett L. Ross  
675 W. Peachtree Street  
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A handwritten signature in cursive script, reading "Henry Walker", is written over a horizontal line. To the right of the signature, there is a small, stylized mark that appears to be "nj".